

PULIN DAS @ PANNA KOCH

v.

STATE OF ASSAM

(Criminal Appeal No. 706 of 2007)

FEBRUARY 22, 2008

[P.P. NAOLEKAR AND P. SATHASIVAM, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987:

ss. 3 (1) and 2 (ii) – Prosecution under – Police raid – Apprehension of accused – Recovery of arms and ammunitions – Conviction by designated court – On appeal, held: Conviction not sustainable – Prosecution witnesses including the police personnel not mentioning about the banned organization, link of the accused therewith and unlawful activities of the accused.

s. 3 (1) – Applicability of – Circumstances discussed.

Appellants-accused were prosecuted u/ss. 3 and 5 of Terrorist and Disruptive Activities (Prevention) Act, 1987. According to prosecution, police party raided the house of PW-5. There was exchange of firing from both the sides. Thereafter both the appellants were apprehended. Arms and ammunitions were also recovered from their possession. FIR was lodged on that basis u/ss. 3/4/5 of the Act. Charges were framed. Designated court convicted both the accused u/s 3 (1) and u/s 3 (2) (ii). However, acquitted them u/s 5 of the Act. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1 It is clear from Section 3(1) of Terrorist and Disruptive Activities (Prevention) Act, 1987 that whoever with intent (i) to overawe the Government as by law established; or (ii) to strike terror in the people or any

A section of the people; or (iii) to alienate any section of the people; or (iv) to adversely affect the harmony amongst different sections of the people, does any act or things by using (a) bombs or dynamite, or (b) other explosive substances, or (c) inflammable substances, or (d) firearms, or (e) other lethal weapons, or (f) poisons or noxious gases or other chemicals, or (g) any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause or as is likely to cause (i) death, or (ii) injuries to any person or persons, (iii) loss of or damage to or destruction of property, or (iv) disruption of any supplies or services essential to the life of the community, or (v) detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a 'terrorist act' punishable under the said Section. [Para 8] [267-D, E, F, G]

Kartar Singh vs. State of Punjab 1994 (3) SCC 569 – followed.

Hitendra Vishnu Thakur and Ors. vs. State of Maharashtra and Ors. 1994 (4) SCC 602; *State through Superintendent of Police, CBI/SIT vs. Nalini and Ors.* 1999 (5) SCC 253 – relied on.

Usmanbhai Dawoodbhai Memon and Ors. vs. State of Gujarat 1988 (2) SCC 271; *Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijjaya and Ors.*, 1990 (4) SCC 76 – referred to.

1.2 An activity which is sought to be punished under Section 3(1) of TADA has to be such which cannot be classified as a mere law and order problem or disturbance of public order or disturbance of even tempo of the life of the community of any specified locality but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law enforcement agencies because the intended extent and

reach of the criminal activity of the 'terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality and may include such anti-national activities which throw a challenge to the very integrity and sovereignty of the country in its democratic polity. The Designated Court must not act mechanically and record conviction without examining whether or not from the evidence led by the prosecution an offence under Section 3 (1) is made out. [Para 9] [267-H; 268-A, B, C]

1.3 In the facts of the case and in light of strict compliance to be followed to attract Section 3(1), the conviction under Section 3(1) and punishment under sub-section 2(ii) of Section 3 of the TADA Act cannot be sustained. The prosecution has miserably failed to establish the charge levelled against both the accused. The Designated Court has committed an error in accepting the prosecution case based on a mere reference of the terrorist organization ULFA by P.Ws. 5 and 6. In fact, both of them have stated that it was the police who disclosed that they recovered some arms from two ULFA men and it is not their own assertion. Neither P.Ws.5 and 6 nor the remaining seven police personnel including Dy. Superintendent of Police, who were examined, whisper a word about the banned organization - ULFA and the alleged unlawful activities of the accused persons in terms of Section 3(1) of the Act. These material aspects have not been adverted to by the Designated Court. [Para 23] [272-F, G, H; 273-A]

1.4 In a case of this nature, particularly, in the light of the stringent provisions as provided in sub-section (1) of Section 3 as well as Section 20A which mandates that no information about the commission of an offence under this Act shall be recorded by the police without prior approval of the D.S.P, and no court shall take cognizance

A of any offence under this Act without previous sanction of the Inspector General of Police or Commissioner of Police, P.W.9 D.S.P. ought to have explained all the details about the ULFA organization its activities and the alleged connection of the accused persons. It is the bounden duty
B of the prosecution to examine highest police officer of the district, namely, Superintendent of Police or equivalent officer about the above-mentioned relevant materials.
[Para 22] [272-B, C, D]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 706 of 2007.

From the Judgment and final order dated 19/4/2007 of the Court of the Judge, Designated Court, Assam, Guwahati in T.A.D.A. Session Case No. 1/1996.

D WITH

Criminal Appeal No. 836 of 2007.

Nitin Sangra, V.D. Khanna and Satyajeet Saha for the Appellant in Criminal Appeal No. 706 of 2007.

E Vijay Hansaria, Aseem Mehrotra, Shefali Jain and Abhijat P. Medh for the Appellant in Criminal Appeal No. 836 of 2007.

Avijit Roy and Ranjan Mozumdar (for M/s. Corporate Law Group) for the Respondent.

F The Judgment of the Court was delivered by

G **P. SATHASIVAM, J.** 1) These appeals, under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the TADA Act") are directed against the common judgment dated 19.04.2007 of the Designated Judge at Assam, Gauhati in TADA Sessions Case No. 1 of 1996 whereby the Designated Judge convicted Pulin Das @ Panna Koch – appellant in Criminal Appeal No.706 of 2007 and Mahendra Saikia @ Dilip Saikia – appellant in Criminal Appeal
H No. 836 of 2007 for offences under Section 3(2)(ii) of the TADA

Act and sentenced them to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default further R.I. for another six months. A

2) Brief facts, in a nutshell, are as follows:

On the night of 08.12.1993, on secret information, the police party under the leadership of S.P. Sonitpur and S.D.P.O., Bishwanath Chariali raided the house of Uday Chetry. It was alleged that the extremist fired upon the police party and the police party also fired in self-defence and as such there was exchange of fire from both sides and thereafter Pulin Das @ Panna Koch— appellant in CrI.A.No.706 of 2007 and Mahendra Saikia @ Dilip Saikia – appellant in CrI.A. No.836 of 2007 were apprehended and arms and ammunitions were recovered from their possession. On the basis of the above incident, an F.I.R. No.187/1993 was recorded and the police registered a case under Sections 3/4/5 of the TADA Act. On 17.12.1995, Charge Sheet No.101 of 1995 in FIR No.187/1993 was filed against both the accused. On 30.08.2006, statements of the appellants-accused were recorded under Section 313 of the Criminal Procedure Code. The prosecution examined nine witnesses in support of its case and exhibited the seizure list (Ex.1), the FIR (Ex.2), the sketch map(Ex.3), the expert report (Ex.4), prosecution sanction(Ex.5) and the charge sheet (Ex.6) and also exhibited the seized arms and ammunitions (Mat. Ex.1-4). The Designated Court, Assam, Gauhati convicted the appellants herein under Section 3(2)(ii) of TADA and sentenced each of them to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default further rigorous imprisonment for another six months. However, the Designated Court acquitted the accused persons under Section 5 of the TADA Act as there was no evidence available for possession of unauthorized arms and ammunition. Being aggrieved by the said judgment, the appellants preferred separate appeals before this Court. B
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3) Heard Mr. Nitin Sangra, learned counsel, for the appellant in Criminal Appeal No.706 of 2007 and Mr. Vijay H

A Hansaria, learned senior counsel, for the appellant in Criminal
Appeal No.836 of 2007 and Mr. Avijit Roy, learned counsel,
appearing for the State of Assam.

B 4) Since both the appellants/accused were convicted only
under Section 3(2)(ii) of the TADA Act, it is useful to refer to the
said provision.

C **“3. Punishment for terrorist acts .—** (1) Whoever with
intent to overawe the Government as by law established
or to strike terror in the people or any section of the people
or to alienate any section of the people or to adversely
D affect the harmony amongst different sections of the people
does any act or thing by using bombs, dynamite or other
explosive substances or inflammable substances or
firearms or other lethal weapons or poisons or noxious
E gases or other chemicals or by any other substances
(whether biological or otherwise) of a hazardous nature in
such a manner as to cause, or as is likely to cause, death
of, or injuries to, any person or persons or loss of, or
damage to, or destruction of, property or disruption of any
supplies or services essential to the life of the community,
or detains any person and threatens to kill or injure such
person in order to compel the Government or any other
person to do or abstain from doing any act, commits a
terrorist act.

F (2) Whoever commits a terrorist act, shall,—

(i) if such act has resulted in the death of any person, be
punishable with death or imprisonment for life and shall
also be liable to fine;

G (ii) in any other case, be punishable with imprisonment
for a term which shall not be less than five years but which
may extend to imprisonment for life and shall also be liable
to fine.”

H 5) In *Kartar Singh vs. State of Punjab*, (1994) 3 SCC
569, the legality and the efficaciousness of Sections 3 and 4

were assailed on the following grounds, namely,-

- (1) These two sections cover the acts which constitute offences under ordinary laws like the Indian Penal Code, Arms Act and Explosive Substances Act;
- (2) There is no guiding principle laid down when the executive can proceed under the ordinary laws or under this impugned Act of 1987; and
- (3) This Act and Sections 3 and 4 thereof should be struck down on the principle laid down in *State of W.B. vs. Anwar Ali Sarkar*, AIR 1952 SC 75 and followed in many other cases including *A.R. Antulay vs. Union of India and Ors.*, (1988) 2 SCC 764.

While upholding the validity of Sections 3 and 4, the Constitution Bench laid down that the Act tends to be very harsh and drastic containing the stringent provisions and provides minimum punishments and to some other offences enhanced penalties also. The provisions prescribing special procedures aiming at speedy disposal of cases, departing from the procedures prescribed under the ordinary procedural law are evidently for the reasons that the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities, secondly that the incensed offences are arising out of the activities of the terrorists and disruptionists which disrupt or are intended to disrupt even the sovereignty and territorial integrity of India or which may bring about or support any claim for the cession of any part of India or the secession of any part of India from the Union, and which create terror and a sense of insecurity in the minds of the people. Further the Legislature being aware of the aggravated nature of the offences have brought this drastic change in the procedure under this law so that the object of the legislation may not be defeated and nullified.

6) In *Hitendra Vishnu Thakur and Others vs. State of Maharashtra and Others*, (1994) 4 SCC 602, while

- A considering Section 3(1) and (2), two-Judge Bench of this Court basing reliance on *Kartar Singh case* (supra), *Usmanbhai Dawoodbhai Memon & Ors. vs. State of Gujarat*, (1988) 2 SCC 271 and *Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijjaya & Ors.*, (1990) 4 SCC 76 held thus:

C "11..... Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the *intention* as envisaged by that section *by means of the weapons* etc. as are enumerated therein with the *motive* as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the *intention* as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a *consequence* of the criminal act that fear, terror or/and panic is caused but the *intention* of committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the *intention* to achieve the result as envisaged by the section and not merely where the *consequence* of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the *requisite intention* as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the *intention* to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under TADA, even if no one is killed

and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision.....

12. Of late, we have come across some cases where the Designated Courts have charge-sheeted and/or convicted an accused person under TADA even though there is not even an iota of evidence from which it could be inferred, *even prima facie*, let alone conclusively, that the crime was committed with the *intention* as contemplated by the provisions of TADA, merely on the statement of the investigating agency to the effect that the *consequence* of the criminal act resulted in causing panic or terror in the society or in a section thereof. Such orders result in the misuse of TADA. Parliament, through Section 20-A of TADA has clearly manifested its intention to treat the offences under TADA seriously inasmuch as under Section 20-A(1), notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of an offence under TADA shall even be recorded without the prior approval of the District Superintendent of Police and under Section 20-A(2), no court shall take cognisance of any offence under TADA without the previous sanction of the authorities prescribed therein. Section 20-A was thus introduced in the Act with a view to prevent the abuse of the provisions of TADA.

13. We would, therefore, at this stage like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the

A investigating officer at some stage of the investigation
chooses to add an offence under same (*sic* some)
provisions of TADA against an accused person, more
often than not while opposing grant of bail, anticipatory or
otherwise. The Designated Courts should always consider
B carefully the material available on the record and apply
their mind to see whether the provisions of TADA are
even *prima facie* attracted.

15. Thus, the true ambit and scope of Section 3(1) is that
no conviction under Section 3(1) of TADA can be recorded
C unless the evidence led by the prosecution establishes
that the offence was committed *with the intention* as
envisaged by Section 3(1) by means of the weapons etc.
as enumerated in the section and was committed with the
D *motive* as postulated by the said section. Even at the cost
of repetition, we may say that where it is only the
consequence of the criminal act of an accused that terror,
fear or panic is caused, but the crime was not committed
with the *intention* as envisaged by Section 3(1) to achieve
the objective as envisaged by the section, an accused
E should not be convicted for an offence under Section 3(1)
of TADA. To bring home a charge under Section 3(1) of
the Act, the terror or panic etc. must be actually intended
with a view to achieve the *result* as envisaged by the said
section and not be merely an incidental fall out or a
F consequence of the criminal activity. Every crime, being a
revolt against the society, involves some violent activity
which results in some degree of panic or creates some
fear or terror in the people or a section thereof, but unless
the panic, fear or terror was *intended* and was sought to
G achieve either of the objectives as envisaged in Section
3(1), the offence would not fall *stricto sensu* under TADA.
Therefore, as was observed in *Kartar Singh case* by the
Constitution Bench : (SCC p. 759, para 451)

H "Section 3 operates when a person not only intends
to overawe the Government or create terror in people

etc. but he uses the arms and ammunition which results in death or is likely to cause death and damage to property etc. In other words, a person becomes a terrorist or is guilty of terrorist activity when intention, action and consequence all the three ingredients are found to exist.”

7) In *State through Superintendent of Police, CBI/SIT vs. Nalini and Others*, (1999) 5 SCC 253, three-Judge Bench of this Court held thus:

544. “Under Section 3 of TADA in order there is a terrorist act three essential conditions must be present and these are contained in sub-section (1) of Section 3 – (1) criminal activity must be committed with the requisite intention or motive, (2) weapons must have been used, and (3) consequence must have ensued.”

8) In the light of the language used and interpreted by this Court in various decisions, it is clear from Section 3(1) that *whoever with intent (i) to overawe the Government as by law established; or (ii) to strike terror in the people or any section of the people; or (iii) to alienate any section of the people; or (iv) to adversely affect the harmony amongst different sections of the people, does any act or things by using (a) bombs or dynamite, or (b) other explosive substances, or (c) inflammable substances, or (d) firearms, or (e) other lethal weapons, or (f) poisons or noxious gases or other chemicals, or (g) any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause or as is likely to cause (i) death, or (ii) injuries to any person or persons, (iii) loss of or damage to or destruction of property, or (iv) disruption of any supplies or services essential to the life of the community, or (v) detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a ‘terrorist act’ punishable under the said Section.*

9) In view of the same, an activity which is sought to be

A punished under Section 3(1) of TADA has to be such which
cannot be classified as a mere law and order problem or
disturbance of public order or disturbance of even tempo of the
life of the community of any specified locality but is of the nature
which cannot be tackled as an ordinary criminal activity under
B the ordinary penal law by the normal law enforcement agencies
because the *intended extent and reach* of the criminal activity
of the 'terrorist' is such which travels beyond the gravity of the
mere disturbance of public order even of a 'virulent nature' and
may at times transcend the frontiers of the locality and may
C include such anti-national activities which throw a challenge to
the very integrity and sovereignty of the country in its democratic
polity. The Designated Court must not act mechanically and
record conviction without examining whether or not from the
evidence led by the prosecution an offence under Section 3 (1)
D is made out.

10) Though the appellants/accused were charged under
Section 5 for possession of arms and ammunitions along with
Section 3(1) and (2), since the Designated Court itself acquitted
them in respect of offence under Section 5, in the absence of
E appeal by the State there is no need to consider the same.

11) Now, let us consider whether prosecution has
established the charge under Section 3(2) (ii) of the TADA Act.
Before going into the oral evidence examined on the side of the
prosecution in support of their claim, since learned counsel
F appearing for the respondent/State insisted us to see the
contents of charge-sheet (Annexure 3), we verified the same.
The written *ejahar* received from the complainant has been
treated as FIR. The following materials available under clause
7 of the charge-sheet read thus:-

G "The fact of the case is that on 8.12.93 on secret
information, it is known that some ULFA outfit members
have taken shelter in the house of Uday Chetry situated at
Christian Pura under Dhekiajuli P.S. Accordingly, the said
house was gheroad by the outfit members. Thereafter the
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outfit members (1) Pulin Das @ Panna Koch, (2) Mohendra Saikia @ Dilip Saikia were arrested. From their possession, one revolver, one 303 rifle, one stand gun and some cartridges were recovered. Be it mentioned while they were nabbed, they opened fire upon police for which there were exchange of fire from both sides. Accordingly, a case under Sections 3, 4 and 5 of TADA Act was registered and started investigation.”

The charge-sheet proceeds that the accused are ULFA outfit members. In order to prove the charge against the accused persons, the prosecution has examined as many as nine witnesses.

12) P.W.1 - Abdul Rahman, a Constable, who proceeded along with the other members of the police party to Christianbasti has not stated anything about the accused particularly their activities. He merely stated that “police arrested two inmates of that house and seized some arms and ammunitions”. In the cross-examination, he admitted that he was away from the house and did not see who made the firing and he did not know whether any gun was fired or not. He also admitted that he did not know whether any arms and ammunitions or any other articles were seized from the accused persons.

13) Nandaraj Sharma, one of the police personnel, who visited the house of P.W. 5 was examined as P.W.2. He mainly referred about possession of arms and ammunitions in the residence where the accused were apprehended. In the cross-examination, he stated that 6/7 empty cartridges were seized from the place of occurrence. He further deposed that there were five or six persons inside the house where the accused persons were arrested and there were also women in that house. According to him, he did not know who fired from inside the house. He also did not whisper a word about the character and activities of the accused.

14) Another police personnel by name Phuleswar Konwer was examined as P.W.3. Though he furnished more details

A about the occurrence particularly gun shot from the house, over-
powering by the police personnel, entering the house,
apprehending the two accused and seizing arms and
ammunitions and also identified both the accused in the court
when he was examined, he also did not say anything about either
B banned organization (ULFA) or the accused and their activities.
On the other hand, he fairly admitted that he did not know whether
the arrested accused persons belonged to any banned
organization. In other words, even the prime witness of
prosecution did not whisper anything about the banned
C organization (ULFA) their connection and unlawful activities.

15) Next witness one Phuleswar Das who is also one of
the police personnel was examined as P.W.4. Though he
mentioned that he heard some firing at the place of occurrence,
he did not say anything about the accused and their activities.

D 16) Shri Uday Chetry, resident of the house in question
was examined as P.W.5. According to him, on 08.12.1993, after
attending a kirtan party, he returned home at 10 p.m. His wife
told him that two guests have come and they are sleeping after
taking food. He also returned to bed after food. The following
E statement made by him before Court is relevant and the same
is reproduced hereunder:-

F "At about 12.30 A.M. midnight, I heard the sound of firing
in the house. Out of fear we did not go out. Thereafter
police called us. Police showed us some arms and
disclosed that they recovered it from two ULFA men."

Except the above statement, he did not say anything about
the accused persons and their activities.

G 17) P.W.6, Om Chetry, who is none else than the brother of
P.W.5. deposed that he lives with his brother Uday Chetry, and
is residing in the same house. Like P.W.5, he also deposed
that at mid-night, he heard the sound of firing, woke up and both
of them were called by the police. He also deposed that from
H police we came to know that both the guests are members of

ULFA.

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18) As rightly pointed out by learned counsel appearing for the appellants/accused though the prosecution has claimed that P.W.5 and P.W.6 were important witnesses, their evidence clearly show that they did not know about the activities of the accused persons particularly whether they are members of ULFA. Both of them have stated that from the police only they came to know that both are members of ULFA. It is clear that they heard the above information about the accused persons from the police. In such situation and particularly in the light of the charge against the accused, it is but proper on the part of the prosecution to put-forth reliable and acceptable evidence/material to show that the accused were members of ULFA which is a banned organization. Apart from the above witnesses, the prosecution has examined two more witnesses in support of their case.

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19) One Durga Mohan Brahma, Inspector of Police, has been examined as P.W.7. His entire evidence is available from pages 39-41 of the paper-book. We scanned the same. Nowhere he mentioned anything about the activities of the accused and ULFA. His evidence is also not helpful to the prosecution.

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20) The next witness examined on the side of the prosecution is P.W.8, Bhadra Kanta Buragobain. He has nothing to do with the charge framed since according to him, he examined arms and ammunitions on 15.12.1995 though seized on 08.12.1993. We have already referred to the fact that the Designated Court itself acquitted the accused persons from the charge under Section 5 of the Act.

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21) The last witness examined on the side of the prosecution was P.W.9, namely, Jogesh Barman. He was, at the relevant time, working as D.S.P. H.Q. at Tezpur. According to him, he received an order from S.P. Sonitpur for completion of the investigation of the case. He further deposed that after going through the materials from the CD, he submitted charge-

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A sheet against both the accused persons. Though P.W.9 is a D.S.P. Senior Officer of the District, he also did not whisper about ULFA, the connection of the accused persons with the said organization and their activities etc.

B 22) In a case of this nature, particularly, in the light of the
stringent provisions as provided in sub-section (1) of Section 3
as well as Section 20A which mandates that no information
about the commission of an offence under this Act shall be
recorded by the police without prior approval of the D.S.P, and
no court shall take cognizance of any offence under this Act
C without previous sanction of the Inspector General of Police or
Commissioner of Police, we are of the view that P.W.9 D.S.P.
ought to have explained all the details about the ULFA
organization its activities and the alleged connection of the
accused persons. It is the bounden duty of the prosecution to
D examine highest police officer of the district, namely,
Superintendent of Police or equivalent officer about the above-
mentioned relevant materials. We have already highlighted the
relevant ingredients and conditions to be fulfilled before initiating
prosecution under Section 3(1) of the TADA Act. Though most
E of the prosecution witnesses adverted to seizure of arms and
ammunitions and the accused were charged for an offence
under Section 5 which speaks about possession of unauthorized
arms etc. in specified areas, the Designated Court acquitted
them on the said charge and admittedly the State has not
F preferred any appeal.

23) In view of the above discussion and in light of strict
compliance to be followed to attract Section 3(1), the conviction
under Section 3(1) and punishment under sub-section 2(ii) of
Section 3 of the TADA Act cannot be sustained. We are satisfied
G that the prosecution has miserably failed to establish the charge
levelled against both the accused. The Designated Court has
committed an error in accepting the prosecution case based
on a mere reference of ULFA by P.Ws. 5 and 6. In fact, both of
them have stated that it was the police who disclosed that they
H recovered some arms from two ULFA men and it is not their

own assertion. Neither P.Ws.5 and 6 nor the remaining seven A
police personnel including Dy. Superintendent of Police, who
were examined, whisper a word about the banned organization
- ULFA and the alleged unlawful activities of the accused
persons in terms of Section 3(1) of the Act. These material
aspects have not been adverted to by the Designated Court. B

24) For the reasons stated above, both the appeals
succeed and are hereby allowed. The conviction of the
appellants under Section 3(1)(2)(ii) of the TADA Act with
sentence and fine thereunder is set aside. The appellants are
directed to be released forthwith, if not required in any other C
offence.

K.K.T.

Appeals allowed.